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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 290

SIGISMUND FRANCIS SWACZYK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 92–99) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered June 13, 1946 (R. 99). The petition for a writ of certiorari was filed July 12, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED

Whether at petitioner's trial for refusal to submit to induction the evidence showed that there was no basis in fact for Selective Service action denying his claim to exemption as a minister of religion.

STATEMENT

On March 7, 1945, petitioner was indicted in the United States District Court for the District of Massachusetts for failing to submit to induction into the armed forces of the United States, in violation of the Selective Training and Service Act of 1940 (R. 1–2). After waiving trial by jury (R. 3), petitioner was tried by the court, convicted, and sentenced to imprisonment for three years (R. 3–4). On appeal to the Circuit Court of Appeals for the First Circuit, the judgment was affirmed (R. 99).

At his trial, petitioner predicated his defense on the ground that he was a minister of religion and had been improperly denied classification as such. He was permitted, without any limitation, to adduce evidence in support of this contention (see R. 7–8, Def. Ex. A–F. R. 35–88).

Petitioner, a citizen of the United States (Gov. Ex. 2a, R. 17), registered under the Selective Training and Service Act of 1940 on October 16, 1940, with Local Board No. 96, Medford, Massachusetts (R. 5; Gov. Ex. 1, R. 11). He executed

his Selective Service questionnaire on December 28, 1940 (Gov. Ex. 2a, R. 12). In this questionnaire, petitioner stated that he was born on October 21, 1916 (R. 17); that his occupation was as a specification man for a company manufacturing gauges, valves, etc., for which he was paid $24 a week (R. 13); that he was married but had no children under 18 years of age (R. 15) or other dependents except his wife (R. 16); that he had been a minister of The Watch Tower Bible and Tract Society since October 12, 1932, and had been "authorized and ordered by Jehovah God and The Watch Tower Bible and Tract Society, as is explained in the Bible in John 15:16" (R. 16); that he was a student preparing for the ministry attending The Watch Tower Bible and Tract Society (R. 17); and that he was a conscientious objector to war (R. 17). Petitioner did not state in the questionnaire the classification he thought he should be given (R. 18). On January 3, 1941, he filed a Special Form for Conscientious Objector (R. 7, Gov. Ex. 2B, R. 23–26), to which was attached "An Important Letter to the Department of Justice" giving the history, background, and beliefs of Jehovah's Witnesses (Deft.'s Ex. B, R. 69–75). Thereafter, as the court below stated, "reclassifications, hearings, appeals, protests and reconsiderations followed each other in kaleidoscopic fashion" (R. 98). The following is a chronological summary of the subsequent events:

Jan. 6, 1941.—Petitioner was classified III–A (married with dependent wife) by the local board (R. 5, 19).

June 12, 1941.—Selective Service Opinion No. 14 was issued, stating that: (1) certain members of Jehovah's Witnesses occupied a ministerial status in that organization comparable to ordained ministers of other religions and such persons "may" be classified IV–D provided their names appeared on the "certified official list" transmitted to State Directors; (2) persons who were "pioneers" in the Society by reason of the time spent in the Society's work were also so qualified if their names appeared on the official list; and (3) other workers in the Society were to have their ministerial status determined on an individual basis. Thereafter, because the Society frequently attempted to increase the list of persons in class (1) and (2), the Opinion was amended to provide that all members not then on the official lists were to have their status determined on an individual basis (Deft.'s Ex. B, R. 76–78).

Aug. 21, 1941.—The government appeal agent forwarded to the local board (R. 42), in connection with petitioner's claim to classification IV–D (ministerial exemption), an undated document of the Watch Tower Bible and Tract Society certifying that petitioner was an ordained minister (R. 36), and a document from the

Malden Company of Jehovah Witnesses to the same effect (R. 37).

Sept. 3, 1941.—The local board advised petitioner it could not change his classification from III–A to IV–D unless his name appeared on the "official list" referred to above (R. 88).

Nov. 14, 1942.—Petitioner filed an affidavit of family status with the local board disclosing that he had been employed, since April 28, 1941, as a detail and designing draftsman by the General Electric Co.; that he was paid $50 a week; and that he worked 56 hours a week at this job (Gov. Ex. 2a, R. 21).

May 24, 1943.—The local board reclassified petitioner in tentative Class I, pending physical examination (R. 5; Gov. Ex. 2a, R. 19).

June 14, 1943.—The local board reclassified petitioner IV–E (conscientious objector liable for service in civilian public service camp) (R. 5; Gov. Ex. 2a, R. 19).

June 28, 1943.—Petitioner was given a hearing by the local board at which he requested that his classification be changed to IV–D (Deft.'s Ex. A, R. 35). At this hearing petitioner submitted: (1) an affidavit dated June 22, 1943, certifying that he was an Assistant Company Servant of the Malden Company of Jehovah's Witnesses (Deft.'s Ex. B, R. 37); (2) a statement signed by 56 persons in which it was declared that he stood in the same relation to the Malden Company as do regular ministers of orthodox

sects to their congregations (Deft.'s Ex. B, R. 39–41); and (3) a statement showing the details of his activities as a Jehovah's Witness (Deft.'s Ex. B, R. 43–49). At that time the local board had received a letter from the Massachusetts Selective Service Headquarters stating that petitioner's name did not appear on the "Jehovah's Witness List" (Deft.'s Ex. E, R. 87–88). The local board refused petitioner's request, and he thereupon appealed (Gov. Ex. 2a, R. 19; Deft.'s Ex. A, R. 35).

Nov. 15, 1943.—The appeal board unanimously classified petitioner I–A (Gov. Ex. 2a, R. 19), after it had referred the matter to the Department of Justice for investigation of petitioner's claim that he was a conscientious objector and petitioner had, before an officer of that agency, voluntarily withdrawn any such claim (Deft.'s Ex. C, R. 85–86).

Nov. 18, 1943.—Petitioner wrote the National Director of Selective Service a letter requesting that the Director take an appeal to the President to establish his claim to classification IV–D (Deft.'s Ex. B, R. 50–53). Petitioner forwarded a copy of this letter to the local board requesting that his induction be postponed pending its consideration (Deft.'s Ex. B, R. 49).

Dec. 1, 1943.—Petitioner filed additional material with the local board showing his other activities as a Jehovah's Witness in helping keep church

records and conducting Bible studies (Deft.'s Ex. B, R. 54–55).

Dec. 14, 1943.—The National Director of Selective Service forwarded petitioner's letter of November 18, 1943, to the Massachusetts Headquarters requesting that it give attention to the matter (Deft's Ex. B, R. 53). On December 28, 1943, the cover sheet for petitioner's Selective Service file was returned to the local board (R. 50).

Jan. 17, 1944.—Petitioner was reclassified II–B by the appeal board on request of petitioner's then employer, the General Electric Company, and thereby exempted until April 1, 1944 (R. 5; Gov. Ex. 2a, R. 19).

May 8, 1944.—Petitioner was reclassified I–A by the local board (R. 6; Gov. Ex. 2B, R. 22).

June 19, 1944.—Petitioner was reclassified II–B until September 1, 1944, by the appeal board on his employer's petition (R. 6; Gov. Ex. 2B, R. 22).

Sept. 18, 1944.—Petitioner was reclassified I–A by the local board (R. 6; Gov. Ex. 2B, R. 22).

Nov. 27, 1944.—On petitioner's request, the local board granted him a hearing in which he renewed his arguments for a IV–D classification. The local board continued his classification in I–A (R. 6; Gov. Ex. 2B, R. 22; Deft.'s Ex. D, R. 87).

Dec. 29, 1944.—The appeal board continued petitioner in I–A by unanimous vote (R. 6; Gov. Ex. 2B, R. 22).

Jan. 8, 1945.—Petitioner wrote the State and National Directors of Selective Service requesting that they review his classification, and claiming that he should be classified IV–D (Deft.'s Ex. B, R. 61–68).

Jan. 15, 1945.—Petitioner reported at the induction station but refused to be inducted (R. 6–7; Gov. Ex. 4, R. 28).

ARGUMENT

Petitioner contends that the evidence showed that he was a duly ordained minister of religion entitled to an exemption as such from training and service under the Selective Training and Service Act, and that, therefore, the trial court erred in not granting his motion for a directed verdict (Pet. 2–3, 15–41). This argument is bottomed on the implicit assumption that petitioner was entitled to a *de novo* consideration in the trial court to determine whether he was a minister of religion entitled to exemption as such. But this position is precluded by the decision of this Court in the *Estep* case, No. 292, Oct. T., 1945, decided February 4, 1946. The Court there held that a registrant who had exhausted all available administrative remedies could assert as a defense to a criminal charge for failure to submit to induction that the Selective Service classification was without basis in fact. But the decision specifically noted that

> * * * The provision making the decisions of the local boards "final" means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant. See *Goff* v. *United States,* 135 F. 2d 610, 612.[1]

This Court then remanded the case for retrial to allow the petitioners there "the opportunity to show that their local boards exceeded their jurisdiction."[2]

Petitioner was allowed to attack his Selective Service classification at his trial below, and he was not limited in any way in introducing evidence to that end. Indeed, the trial judge appears to have given the petitioner more than he was entitled to under the *Estep* doctrine, by granting petitioner's request for a ruling that "If the registrant is a 'regular or duly ordained minister of religion' within the meaning of the Act and Regulations and was such at the time of his registration and

[1] Pp. 6–7 of the slip sheet opinion.

[2] P. 8 of the slip sheet opinion.

classification, he had no duty to submit to training or render service under the Act" (R. 9–10). Nevertheless, even after such full review, the trial judge found petitioner guilty and thereby necessarily found that petitioner was not entitled to classification as a regular or duly ordained minister of religion.

It is clear that there was sufficient basis for the administrative determination. Thus, for example, the evidence showed that petitioner worked a full week of 56 hours in secular employment as a design draftsman with the General Electric Company, and that he had obtained an exemption from induction by reason of such employment. Those factors which petitioner now urges to support his claim to classification as a minister of religion, such as his work in preaching the gospel from house to house, keeping church records and conducting Bible studies, might indicate merely that petitioner was an active lay member of his church without necessarily proving that he was a minister of religion. As the court below pointed out (R. 98–99):

> * * * the Board may well have concluded that Swaczyk's status was more nearly similar to that of a Sunday-School superintendent or some comparable lay official in the orthodox sects, than to that of a minister of religion as the term is used in this Act. We take notice that many such lay officials in other denominations devote long hours and much energy to religious

> activities, without claiming that they are thereby made ministers of religion. Giving a status or an act a name does not automatically make it the same as other things previously called by that name.

There are only two factors upon which petitioner's attack upon the Selective Service classification is based. First, he argues that the regular performance of secular employment by him was not necessarily incompatible with his claim for exemption as a regular minister of religion, citing *United States ex rel. Trainin* v. *Cain,* 144 F. 2d 944 (C. C. A. 2), certiorari denied, 323 U. S. 795, rehearing denied, 323 U. S. 819 (Pet. 16–17, 24–31). While this proposition is sound as thus stated, it is equally true, as the *Trainin* case itself shows (at p. 949), that this factor can properly be taken into consideration by the Selective Service System in determining whether registrant is entitled to classification as a regularly practicing minister. *Harris* v. *Ross,* 146 F. 2d 355 (C. C. A. 5); *In re Rogers,* 47 F. Supp. 265 (N. D. Tex.). The other point made by petitioner is that the local board refused him a classification as a minister of religion because he was not on the "official list" which had been furnished the Selective Service System by the Jehovah's Witnesses (Pet. 9–10, 13). While there are some indications that this consideration might have affected the local board's determination, the record is not conclusive in this regard. In fact, the clerk of the local draft board

testified that (R. 6) "there was no record or statement by the Local Board as to its reasons for classification of the defendant in this case." Moreover, even assuming, *arguendo,* that the local board acted only for the reason petitioner assigns, that error would be harmless. The final and controlling classification was made by the appeal board after a *de novo* consideration of the proper classification to be given him, and, therefore, the propriety of the classification must be tested in the light of the evidence which was before that board. See *Bowles* v. *United States,* 319 U. S. 33; *Falbo* v. *United States,* 320 U. S. 549, 555; *Cramer* v. *France,* 148 F. 2d 801, 804 (C. C. A. 9). It was for refusal to submit to induction following such final classification that petitioner was indicted. There is not a scintilla of evidence in petitioner's Selective Service file or the record here indicating that this final determination of the appeal board was affected in any way by the circumstance that petitioner was not on the so-called "official list." On the contrary, as we have already shown, there were several factors, including petitioner's full time secular employment and other claims for exemption, which formed a sufficient basis in fact for the classification of the appeal board.

Actually, as is apparent from the petition itself (Pet. 35–39), the claim to a ministerial exemption and the burden of petitioner's argument here are essentially based on the now discredited theory

that all Jehovah's Witnesses are ministers and entitled to exemption as such. Cf., e. g., *Rase* v. *United States,* 129 F. 2d 204, 209 (C. C. A. 6); *Seele* v. *United State·* 133 F. 2d 1015, 1021 (C. C. A. 8); *Buttecali* v. *United States,* 130 F. 2d 172, 174 (C. C. A. 5). And it thereby ignores the required administrative determination based on the realities of the situation of the individual case. See *United States ex rel. Hull* v. *Stalter,* 151 F. 2d 633, 637–638 (C. C. A. 7).[3] There is no conflict with that decision, as urged by petitioner (Pet. 15); the registrant there was a full time minister, not, as here, a full time draftsman working 56 hours a week in secular employment (R. 21).

[3] In this connection, the National Director of Selective Service issued a letter of advice covering the "Ministerial Status of Certain of The Officials of Specified Churches, Religious Sects, or Religious Organizations" (Def. Ex. B, R. 79–84). That letter substantially reiterated with respect to Jehovah's Witnesses the substance of Opinion No. 14, and pointed out that whether an official of that group should be considered a regular minister was a matter to be determined in each individual case. The letter went on to state that (R. 82):

"Experience has shown that due to the fact that a large proportion of the members of any Jehovah's Witnesses unit claim to be ministers, special care must be used in applying the above-mentioned tests. Information presented in the case of a registrant who claims to be a minister of the Jehovah's Witnesses group must show facts regarding both his ministerial position and his ministerial activities which clearly justify his exemption as a minister. Certificates, affidavits, or statements of opinion are not necessarily conclusive proof of a ministerial status."

CONCLUSION

The decision below is correct, it turns on the facts of the particular case, and it does not involve any conflict of decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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